Maillard (1890) 121 N. Y. 69. Moreover equity acts with more hesitation and greater care in favor of such a claim than on any other occasion, *Basset* v. *The Co.* (1867) 47 N. H. 426. Evidently, then, equitable interests are considered superior to mere equities, and it is inevitable that the leading case so deciding in a conflict between the two claims, *Phillips* v. *Phillips* (1861) 4 De G., F. & J. 208, 218, should be found fully sustained in 2 Pomeroy, Eq. Jur. § 775. Thus the decision in the Virginia case could only be reached in accordance with true principles by pointing out that the plaintiff was seeking to follow a trust *res*, as appears by the decree of the lower court (and see 3 Lewin on Trusts p. 1057, § 11, Am. Ed. of 1888 and *Cave* v. *Cave* (1879) L. R. 15 Ch. Div. 639) and that both parties had therefore equities of the same nature, i. e. equitable estates, neither of which was acquired under such circumstances as to create an equitable estoppel. For the position that the defense of bona fide purchaser for value has no application when the estate purchased is an equitable one is unsound.

LIABILITY OF MUNICIPALITY FOR INJURY BY ITS VESSELS UPON NAVIGABLE WATERS.—The clearly settled doctrine that a municipality is not liable for negligence connected with the operation of its fire departments is beyond doubt to be placed upon the general ground that protection from fire is a function involving public interests. By the majority of cases the explanation given is that the maintenance and operation of fire departments is provided by the city not in its ordinary corporate capacity but as a part of the State government. If the municipality is acting in the capacity of a governmental agency it cannot be held for negligence, since those guilty of the lack of care were not its servants, but those of the State, which cannot be sued for lack of a forum. This explanation is unassailable with regard to fire service, if the test of the governmental capacity in that respect is the fact that the city acts "in obedience to an act of the legislature * * * in pursuance of a duty imposed by law," *Hafford* v. *New Bedford* (Mass. 1860) 16 Gray 297, or that the act is one "from which the city, as a corporation, derives no benefit or advantage." *Gillespie* v. *Lincoln* (1892) 35 Neb. 34. But a more scientific test seems to be furnished by the question, whether the function is in fact one of general state government. *Jewett* v. *City of New Haven* (1871) 38 Conn. 368. Under this criterion it is much less clear that the city operates fire departments as a state agent, the duty of the state to protect from fire being by no means well established. Apparently influenced by this consideration certain courts have inclined to hold that fire protection is a local function, *State* v. *Denny* (1888) 118 Ind. 449, 470; cf. *State* v. *Moores* (1895) 55 Neb. 480, and to place the exemption of municipalities from liability upon the ground of public policy. *Wilcox* v. *Chicago* (1883) 107 Ill. 334. However, the view that fire service is a state function is too well established to be generally attacked. *Tislin* v. *Boston* (1870) 104 Mass. 87; *Dodge* v. *Granger* (1892) 17 R. I. 664; *Burrill* v. *Augusta* (1886) 78 Me. 118; *Hayes* v. *Oshkosh* (1873) 33 Wis. 314.

It is interesting to note the application of these two views upon liability for injury caused by a municipality's vessels upon navigable waters,

and consequently under admiralty jurisdiction. *The Max Morris* (1890) 137 U. S. 1. In the leading case in this connection, *Workman* v. *The Mayor of New York* (1900) 179 U. S. 552, reversing the lower court, which, in accordance with the general rule, had held the city not liable, the Supreme Court held that the city of New York was liable *in personam* for damage caused by one of its fire-boats, the fire department being "an integral branch of local administration." The decision is a square assertion of the view that protection from fire is not a State function. On the other hand, a previous federal case, *Thompson Nav. Co.* v. *Chicago* (1897) 79 Fed. 984, had reached exactly the same result under the other theory. Since by its view the fire service was a State function, the individuals guilty of negligence were not the servants of the city. But as the liability in admiralty may be based on the *ownership* of the vessel causing the injury, the city as owner was held without regard to its relationship with those operating the vessel.

Relying upon the doctrine of *Workman* v. *City of New York*, supra, the United States District Court for the District of Oregon has recently held the Port of Portland, a municipal corporation organized with purely governmental functions, for harbor maintenance, to be liable *in personam* for the negligence of its vessels. *U. S.* v. *Port of Portland* (1906) 145 Fed. 865. On account of the peculiar nature of this "municipality," the decision seems to have carried the rule of *Workman* v. *City of New York* to unwarranted lengths. Clearly the liability might have been imposed under the theory of *Thompson Nav. Co.* v. *Chicago*, supra, since the ownership of the vessels by the Port was undisputed. It might equally well have been placed on the ordinary theory of negligence, the State in creating a municipality of solely governmental functions with power to "sue and be sued" having virtually submitted to the ordinary tribunals in respect of such matters. But since the corporation was admittedly created as "an arm of the State, to perform its functions" a capacity entirely inconsistent with "local administration" as the phrase was used in *Workman* v. *City of New York*, it would seem that the theory of the latter case was entirely inapplicable.

EFFECT OF DURESS UPON MARRIAGE.—In a recent Mississippi case in which the insured was coerced into a marriage by duress, which was never consummated by cohabitation the question arose whether the "wife" was entitled to the insurance money payable to the "widow." The court held that the pretended wife was not entitled to the money because she was not the widow of the insured. The theory of the case is that a marriage induced by such duress is absolutely void and liable to collateral attack, *Grand Lodge* v. *Smith* (1906) 42 So. 89.

Despite a great deal of confusion among the authorities, the almost unanimous view of the text writers is that such marriage is absolutely void. Bishop, Mar., Div. & Sep. § 450-550; 1 Tyler Inf. & Cov., 2nd ed., Ch. 40; 2 Kent, 8 ed., 40. And as a matter of principle this view would seem to be correct. It is recognized that any fraud or duress, which prevents the mind from following the act, vitiates an ordinary contract, *Foshay* v. *Ferguson* (1843) 5 Hill 155. And, although marriage is some-